§§ 187, 188, which was binding on the court in this case. *Cullinan* v. *Union Surety & Guaranty Co.*, 79 N. Y. App. Div. 409, 80 N. Y. Supp. 58.

BILLS AND NOTES — SET-OFF BY ACCOMMODATED PAYEE OF PROMISSORY NOTE AGAINST INSOLVENT BANK. — The accommodated payee of a promissory note discounted it at the defendant bank which had knowledge of the facts. The bank became insolvent before the note fell due. The payee brought suit in equity to compel the receiver to offset his credit balance in the bank against the amount of the note. *Held*, that the receiver must do so. *Building and Engineering Co.* v. *Northern Bank*, 206 N. Y. 400, 99 N. E. 1044.

If a negotiable instrument is received with knowledge of a suretyship relation between the parties to the instrument, the ordinary rules of suretyship are held to apply in equity. See CHALMERS, BILLS OF EXCHANGE, 7 ed., 224. As between himself and the party accommodated, the accommodating party is in effect a surety. *American National Bank* v. *Junk Brothers*, 94 Tenn. 624, 30 S. W. 753. See *Latimer* v. *Wood*, 73 Fed. 1001, 1002. Accordingly, an extension of time to the accommodated party is held to release the accommodating party. See 2 AMES, CASES ON BILLS AND NOTES, 82, n. 2. And prior to the Negotiable Instruments Law, the New York court would clearly have recognized the accommodated payee as the party primarily liable, with a right of set-off which equity will protect. *Clute* v. *Warner*, 8 N. Y. App. Div. 40; *Scott* v. *Armstrong*, 146 U. S. 499, 13 Sup. Ct. 148. However, sections 119, 120, and 192 of the Negotiable Instruments Law have generally been construed strictly as holding the maker of a note liable thereon without regard to the suretyship relation. *Union Trust Co.* v. *McGinty*, 212 Mass. 205, 98 N. E. 679; *Wolstarholme* v. *Smith*, 34 Utah 300, 97 Pac. 329. *Contra*, *Fullerton Lumber Co.* v. *Snouffer*, 139 Ia. 176, 117 N. W. 50. It has been suggested that the sections in the Negotiable Instruments Law as to suretyship are inadequate and should be entirely omitted. See 59 U. OF PA. L. REV. 542.

CANCELATION OF INSTRUMENTS — INSURANCE POLICY — BREACH OF WARRANTY. — An insured warranted that no company had refused him insurance. He had been rejected by another company, but was ignorant of that fact. Soon after the policy was issued, the insurance company brought a bill to have it canceled, offering to return the premiums. *Held*, that the company is entitled to the relief. *Pacific Mutual Life Ins. Co.* v. *Glaser*, 150 S. W. 549 (Mo.).

Although the court admitted that the breach of warranty rendered the policy invalid, it granted the relief only on the ground that there was a mutual mistake of fact. But those mistakes which the parties expressly provide for are not the kind that equity relieves against. Mistake in itself is a ground for equity jurisdiction only when the plaintiff has become bound by a contract under circumstances which make it inequitable for the other party to enforce it. But in the principal case he has not become bound at all. See 2 POMEROY, EQUITABLE JURISPRUDENCE, § 852. *Cf.* 23 HARV. L. REV. 623. The real reason for cancelation in such a case depends upon the equitable doctrine of *quia timet*. A party whose defense depends upon parol evidence should not be subjected to the danger of future vexation by suit upon a written instrument, particularly a specialty, *primâ facie* valid. *Connecticut Mutual Life Ins. Co.* v. *Home Ins. Co.*, 17 Blatchf. (U. S.) 142; *Cooper* v. *Joel*, 27 Beav. 313. See *Merritt* v. *Ehrman*, 116 Ala. 278, 288, 22 So. 514, 516. *Cf. Fenn* v. *Craig*, 3 Y. & C. Exch. 216. Although insurance warranties are conditions precedent in substance, they are conditions subsequent in form and their breach must be proved affirmatively. *Chambers* v. *Northwestern Mutual Life Ins. Co.*, 64 Minn. 495, 67 N. W. 367; *O'Connell* v. *Supreme Conclave Knights of Damon*, 102 Ga. 143, 28 S. E. 282.